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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,048	07/14/2003	Ronald W. Ausen	56759US010	6075
32692	7590	06/07/2005	EXAMINER	
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EASHOO, MARK	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,048

Applicant(s)

AUSEN ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-30 and 34-40 is/are pending in the application.
- 4a) Of the above claim(s) 34-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date var.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of claim group I, claims 20-30, in the reply filed on 01-APR-2005 is acknowledged.

Claims 34-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 01-APR-2005.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-25 are rejected under 35 U.S.C. 103(a) as being obvious over de Navas Albareda (US Pat. 4,056,593).

de Navas Albareda teaches the claimed of forming a fastener, comprising: extruding a resin through a die having a base cavity portion and ridge cavity portions which extend from the base cavity portion (Figs. 1-2); hook projections having head and stem portions (Figs. 2 and 3); forming discrete projections (Fig. 2, element 4) on ridges (Fig. 2, element 7); bisecting/cutting the ridges and/or discrete projections at one or more locations along a portion of the ridge height (Figs. 1-6); stretching to separate cut ridge portions (Figs. 3-4); and heating (Fig. 1, element 17).

de Navas Albareda does not specifically state that melt flow molecular orientation is induced to at least the ridge portions of extrudate. Nonetheless, it is intrinsic that at least a minor amount of melt flow molecular orientation is induced to the extrudate due to the shear forces acting on the molten material as it passes through the die and stretch induced molecular orientation by the conveyor belt (element 5) before cutting which must be moving somewhat faster than the extrusion rate to prevent fouling. Since some molecular orientation exists in the extrudate and only the base is drawn, it is intrinsic that upon heating to a draw temperature that relaxation or shrinkage would occur in the cut portions of the ridge. It is noted that the instant claim does not specify the amount of orientation, but merely states that some orientation is present the resulting degree of shrinkage would be intrinsic.

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Claims 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over de Navas Albareda (US Pat. 4,056,593) as applied to claims 20-25 above, and further in view of Moren et al. (US Pat. 5,908,680).

de Navas Albareda does not teach adding a foaming agent to a fastener product. However, Moren et al. teaches adding a foaming agent (ie. an incompatible gas phase) to a fastener product (6:50-60). It is noted that filler volumes are well known to be in the range of 20-50% depending upon the effect desired from the filler. de Navas Albareda and Moren et al. are combinable because they are from the same field of endeavor, namely, products having upstanding stems on a base web which are used for frictional engagements. At the time of invention a person of ordinary skill in the art would have found it obvious to have used the foaming agent of Moren et al., in the process of de Navas Albareda, since Moren et al. suggests that foam materials are among many equal alternatives as a choice of materials for upstanding stem products.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 20-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-26 of copending Application No. 10/396,652.

Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 20-26 of copending Application No. 10/396,652 teaches the claimed of forming a fastener, comprising: extruding a resin through a die having a base cavity portion and ridge cavity portions which extend from the base cavity portion; hook projections having head and stem portions; forming discrete projections on ridges; bisecting/cutting the ridges and/or discrete projections at one or more locations along a portion of the ridge height; stretching to separate cut ridge portions; melt flow molecular

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orientation is induced to at least the ridge portions of extrudate; and heat treating to reduce the thickness of the cut projections, 5-90%.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. *However, it is noted that copending Application No. 10/396,652 has been allowed by the examiner of record but has not been patented/issued because the issue fee has not been paid.*

Claims 26-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-26 of copending Application No. 10/396,652 in view of Moren et al. (US Pat. 5,908,680). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 20-26 of copending Application No. 10/396,652 teaches the claimed of forming a fastener, comprising: extruding a resin through a die having a base cavity portion and ridge cavity portions which extend from the base cavity portion; hook projections having head and stem portions; forming discrete projections on ridges; bisecting/cutting the ridges and/or discrete projections at one or more locations along a portion of the ridge height; stretching to separate cut ridge portions; melt flow molecular orientation is induced to at least the ridge portions of extrudate; and heat treating to reduce the thickness of the cut projections, 5-90%.

Claims 20-26 of copending Application No. 10/396,652 does not teach adding a foaming agent to a fastener product. However, Moren et al. teaches adding a foaming agent (ie. an incompatible gas phase) to a fastener product (6:50-60). It is noted that filler volumes are well known to be in the range of 20-50% depending upon the effect desired from the filler. Claims 20-26 of copending Application No. 10/396,652 and Moren et al. are combinable because they are from the same field of endeavor, namely, products having upstanding stems on a base web which are used for frictional engagements. At the time of invention a person of ordinary skill in the art would have found it obvious to have used the foaming agent of Moren et al., in the process of claims 20-26 of copending Application No. 10/396,652, since Moren et al. suggests that foam materials are among many equal alternatives as a choice of materials for upstanding stem products.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. *However, it is noted that copending Application No. 10/396,652 has been allowed by the examiner of record but has not been patented/issued because the issue fee has not been paid.*

Claims 20-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of US Pat. 6,814,912. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 1-8 of US Pat. 6,814,912 teaches the claimed of forming a fastener, comprising: extruding a resin through a die having a base cavity portion and ridge cavity portions which extend from the base cavity portion; hook projections having head and stem portions; forming discrete projections on ridges; bisecting/cutting the ridges and/or discrete projections at one or more locations along a portion of the ridge height; stretching to separate cut ridge portions; melt flow molecular orientation is induced to at least the ridge portions of extrudate; and heat treating to reduce the thickness of the cut projections, 5-90%.

Claims 26-30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of US Pat. 6,814,912 in view of Moren et al. (US Pat. 5,908,680). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claims 1-8 of US Pat. 6,814,912 teaches the claimed of forming a fastener, comprising: extruding a resin through a die having a base cavity portion and ridge cavity portions which extend from the base cavity portion; hook projections having head and stem portions; forming discrete projections on ridges; bisecting/cutting the ridges and/or discrete projections at one or more locations along a portion of the ridge height; stretching to separate cut ridge portions; melt flow molecular orientation is induced to at least the ridge portions of extrudate; and heat treating to reduce the thickness of the cut projections, 5-90%.

Claims 1-8 of US Pat. 6,814,912 does not teach adding a foaming agent to a fastener product. However, Moren et al. teaches adding a foaming agent (ie. an incompatible gas phase) to a fastener product (6:50-60). It is noted that filler volumes are well known to be in the range of 20-50% depending upon the effect desired from the filler. Claims 1-8 of US Pat. 6,814,912 and Moren et al. are combinable because they are from the same field of endeavor, namely, products having upstanding stems on a base web which are used for frictional engagements. At the time of invention a person of ordinary skill in the art would have found it obvious to have used the foaming agent of Moren et al., in the process of claims 1-8 of US Pat. 6,814,912, since Moren et al. suggests that foam materials are among many equal alternatives as a choice of materials for upstanding stem products.

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**Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaiani can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Eashoo, Ph.D.  
Primary Examiner  
Art Unit 1732

5/31/2005  
me

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